IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 87 of 1993.

Date of Decision: October 26th, 2007.

State of H. P. Appellant.

Versus

Dhan Singh. Respondent.

Coram

Hon'ble Mr. Justice Surjit Singh, J.

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? No .

For the appellant : **Mr. S.D. Vasudeva, Addl. Advocate General with Mr. D.S. Nainta, Dy. Advocate General.**

For the respondent : **Mr. Vinay Thakur, Advocate, vice Mr. T.R. Chandel, Advocate.**

SURJIT SINGH, J (oral).

This appeal by the State is directed against the judgment of Sessions Court whereby the respondent who was sent up for trial for an offence under Section 302 of the Indian Penal Code has been acquitted of the charge of murder but held guilty of the charges under Section 325 and 323, I.P.C. and sentenced to under-go rigorous imprisonment for one year and to pay a fine of rupees 5000/- for the offence under Section 325 and to under-go simple imprisonment for two months for the offence under Section 323, I.P.C.

The grievance of the State is that the evidence on record is enough to hold the respondent guilty of the offence of murder punishable under Section 302, I.P.C. or in any case of an offence under Section 304, I.P.C.

---

[1] Whether reporters of the Local papers are allowed to see the judgment?

Prosecution case may be summed up thus: PW2 Padam Singh lodged a report with the Police on 25-8-1991 that on the previous night around 10.00 P.M when he was present on the path of village Chhichria, PW1 Om Parkash alias Chonta son of deceased Gita Ram came to him and told that the respondent had been quarreling with his father and that when he tried to intervene, he too was hit on his nose. He further reported that PW1 Om Parkash was having a bleeding injury on his nose. It was also reported by him that he went to the spot in the company of PW1 Om Parkash and found that Gita Ram was lying on the Lala Cheta path near the Dhaba of DW1 Jagdish and was gasping for breath and that when water was sought to be poured into his mouth, it was felt that he was no more. Police registered a case on the basis of the statement of Padam Singh (PW2) vide FIR No. 61 of 1991 at Police Station Rajgarh. Inquest was conducted. Dead body was sent to the Hospital for post mortem examination. Dr. S.R Sharma (PW11) conducted the post mortem examination and noticed compression over the precordium in the fifth intercostals space with fracture of fifth left rib in the midsternal region along with a contusion measuring 3 cm x 2 cm in the said region. Another contusion on the left elbow measuring 4 cm was also noticed. Doctor opined that the cause of death was neurogenic shock caused by injury to be precordium. The injury to the precordium was opined to be the result of a direct blow and the same, in the opinion of the Doctor, was sufficient in the ordinary course of nature to cause death. The Doctor also opined that the injury could have been caused as a result of hitting with stone Exhibit P1 which was alleged to have been thrown on the deceased by the respondent after he was pushed down a Danga. The Police also recorded the statements of the persons who claimed to have witnessed the occurrence.

During the course of trial, the prosecution examined the son of the deceased, namely, Om Parkash (PW1) who claimed to have witnessed the occurrence. No other witness examined by the prosecution testified to have seen the respondent causing any injury to the deceased. The trial Court believed the testimony of PW1 Om Parkash, the son of the deceased, partially to the extent it was corroborated by the testimony of Padam Singh (PW2) and came to the conclusion that this was a case of voluntarily causing grievous hurt to the deceased and simple hurt to Om Parkash (PW1) by the respondent and convicted and sentenced him accordingly, as aforesaid.

We have heard the learned Additional Advocate General and gone through the record.

The earliest version which was given by Om parkash (PW1) to Padam Singh (PW2) immediately after the occurrence and which Padam Singh reported to the Police in the form of FIR Exhibit PB and also testified in the Court while appearing as PW2 is that the deceased and the respondent had quarreled and the respondent was giving beatings to the deceased. Om Parkash (PW1) did not narrate to PW2 that his father (the deceased) had been kicked or pushed down the Danga or hit with a stone by the respondent. Therefore, the testimony of PW1 Om Parkash that his father was kicked and then pushed down the Danga and thereafter two pieces of stone were thrown at him cannot be believed unless corroborated by some other evidence. And we find no corroborative evidence on record. Rather, from the testimony of Padam Singh (PW2) it appears that what was narrated to him by PW1 Om Parkash is that his father had a fall from Danga in the course of grappling between him and the respondent. The Doctor who conducted the post mortem examination, namely, S.R. Sharma (PW11) has very categorically stated that the injury to the precordium which led to the

trauma resulting in death could have been sustained by the deceased as a result of fall on a hard surface. It has also come in evidence that the deceased was drunk that night and had picked quarrel with different persons, including Jagdish (DW1).

In view of the above said position, we do not think this is a case of murder punishable under Section 302 or case of culpable homicide not amounting to murder punishable under Section 304 of the Indian Penal Code as canvassed by the learned Additional Advocate General. Consequently the appeal is dismissed.

Surjit Singh)
Judge.

(Surinder Singh)
Judge.

October 26th, 2007.
(bm)